



April 10, 2008

Ms. Elizabeth S. Merritt
Deputy General Counsel
National Trust for Historic Preservation
1785 Massachusetts Avenue, NW
Washington, DC 20036

Dear Ms. Merritt:

In response to your letter (via fax) dated April 10, 2008, the City of Springfield is well aware of the requirements of Section 106 of the National Historic Preservation Act. The City of Springfield has every intention of complying with all applicable federal and state regulations triggered by the use of federal funds on this project and is proceeding in a timely manner to do so.

Staff has been steadily working on this project since the City Council endorsed the design by adopting Resolution 9570 on February 5, 2008. We have been in contact with the State Historic Preservation Office (SHPO) and have hosted Mark Miles, SHPO Director, and two of his staff in Springfield to discuss the project as well as the history of the Square and its many iterations. At SHPO's request, City staff has been gathering additional information about the Square, the original design prepared by Lawrence Halprin and Associates, what was built and not built, and how that design has been modified since its construction. We are using primary sources, including the Halprin Archives, housed at the University of Pennsylvania. Had you contacted SHPO or the City prior to sending this communication, you would have known that we have already initiated the Section 106 process. It strikes me as irresponsible for the Trust to send such a letter without checking the facts.

I am well aware of Lawrence Halprin's standing as a landscape architect and that his prominence may be justification listing on the National Register. However, until SHPO has completed its review of how the site has been altered through the years, I find it difficult to understand your characterization that the site is of "exceptional importance". It appears that the Trust has already established a position on the site without a thorough review of all the information. If you indeed have additional information to support your position, we would consider it a good faith effort on your part to share it with the City of Springfield and SHPO so that we may arrive at a rational consensus.

DEPARTMENT OF PLANNING AND DEVELOPMENT

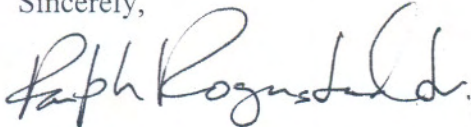
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I am also concerned that you would infer that the City would preemptively damage or destroy the square in an attempt to short circuit the Section 106 process. As I stated above, we are well aware of the process and the potential penalties for not following the process. As a result of the use of federal funds from various sources, this department is involved in several dozen Section 106 reviews each year. We always follow the process to the best of our ability and make any appropriate modifications that result.

Since we intend to fully follow the requirements of Section 106, I see no need to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Rognstad Jr.", written in a cursive style.

Ralph Rognstad Jr.
Director

c: Mayor and Members of City Council
Bob Cumley, City Manager
Evelyn Honea, Deputy City Manager
Collin Quigley, Assistant City Manager
Don Klima, Advisory Council on Historic Preservation
Charlene Vaughn, Advisory Council on Historic Preservation
Katty Harris, Advisory Council on Historic Preservation
Mary Ann Naber, Federal Preservation Office, Federal Highway Administration
Peggy Casey, Federal Highway Administration
Mark Miles, Director, Missouri State Historic Preservation Office
Barbara Fitzgerald, Executive Director, Missouri Preservation
Jennifer Sandy, Midwest Office, National Trust for Historic Preservation

NATIONAL
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PRESERVATION

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Mr. Ralph Rognstad, Director
City of Springfield Planning & Development
840 Boonville Avenue
P.O. Box 8368
Springfield, MO 65801-8368

Re: Redesign of Park Central Square

Dear Mr. Rognstad:

On behalf of the National Trust for Historic Preservation, I am writing to express our grave concerns regarding the proposed redesign of Park Central Square by the City of Springfield. We understand that the Federal Highway Administration (FHWA) is providing funding for the work through the Missouri Department of Transportation for the Park Central Streetscape project (TCSP-5905(902)) using Transportation and Community and System Preservation funds, and possibly the Heers Streetscape project (Project STP-5910 (804)), a transportation enhancement project to improve the streetscape around the Heers Building adjacent to the Square.

Park Central Square, designed by renowned landscape architect Lawrence Halprin, may be eligible for the National Register of Historic Places. As you know, Halprin was a pre-eminent landscape architect of the 20th century and best known internationally for an unrivaled collection of public spaces. Even though the Square was completed less than 50 years ago, its "exceptional importance" makes it potentially eligible for National Register listing.

In light of the significance of Park Central Square, the use of federal funds for the redesign project requires prior compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, which involves a consultation process to "take into account" the effects of the project on historic properties. In addition, because of the fact that transportation funds are involved, Section 4(f) of the Department of Transportation Act applies, 49 U.S.C. § 303(c), which prohibits harm to any historic properties unless there is "no feasible and prudent alternative" to harming the site.

We urge the City to proceed with great caution until these legal requirements are satisfied. As explained in more detail below, Section 110(k) of the National Historic Preservation Act, 16 U.S.C. § 470h-2(k), prohibits federal financial assistance to applicants who intentionally damage a historic property prior to the federal agency completing its review process. Accordingly, moving forward with the proposed redesign of Park Central Square without prior compliance with Section 106 could well result in the loss of federal funds altogether.

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Federal Funding for the Park Central Square Project Involves Legal Restrictions on the Redesign of the Square

The intended use of federal transportation funds for the Square triggers several legal requirements, including the following:

- Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f requires all federal agencies to "take into account" the effects of their actions on historic properties. See 36 C.F.R. Part 800. The consultation process that the FHWA is responsible for conducting includes a specific role for direct participation by local governments and applicants for funding. *Id.* §§ 800.2(c)(3)-(4), 800.3(f)(1). In addition, the National Trust has submitted a request to the FHWA to participate as a consulting party in the Section 106 review process for this project. Section 106 review will first require an evaluation of the National Register eligibility of Park Central Square. If it is determined to be National Register eligible, the FHWA must seek alternatives and modifications to the project that would avoid, minimize, and mitigate any harm to the Square. *Id.* §§ 800.6(a), 800.1(a).
- Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c), 23 U.S.C. § 138, prohibits all DOT agencies, including the FHWA, from approving any project that would require the harmful "use" of historic properties, unless the agency can show that there is "no feasible and prudent alternative" to the project, and that the project includes "all possible planning to minimize harm" to historic properties.

Because of the significance of Park Central Square, the redesign project has the potential either to enhance and rehabilitate, or to severely damage or destroy, the historic characteristics of the Square.

Anticipatory Demolition of the Square Would Jeopardize Current and Future Federal Funding for the Project

We understand that the City is anxious to proceed quickly to finalize plans for Park Central Square. However, the National Historic Preservation Act includes a strict remedy to deter applicants from engaging in activities that may damage or harm a historic property prior to federal review of a request for funding or permits. Preemptive damage or destruction of historic properties would foreclose the opportunity of the Advisory Council on Historic Preservation to comment on the project in any meaningful way (36 C.F.R. § 800.9(b)). In order to discourage grant recipients from engaging in this kind of "anticipatory demolition," the NHPA prescribes a draconian penalty – it forbids the approval of federal funding or permits to any applicant that has intentionally destroyed or harmed a historic property in order to circumvent

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the requirements of the NHPA, or where the applicant (i.e., the local government) allows a third party to do so despite having the legal power to prevent it. Section 110(k) provides:

[E]ach federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur

16 U.S.C. § 470h-2(k); see 36 C.F.R. § 800.9(c).

In this case, if the City were to significantly adversely affect the historic features of Park Central Square prior to Section 106 review, the FHWA and other federal agencies would be required to deny applications for any federal funds or any permits for this project. We urge the City not to take the risk of jeopardizing its eligibility for federal funding for what could be a successful community revitalization project.

Interests of the National Trust for Historic Preservation

The National Trust for Historic Preservation was chartered by Congress in 1949 to promote the historic preservation policy of the United States, and to facilitate public participation in historic preservation (16 U.S.C. § 468). In addition to its headquarters in Washington, D.C., the National Trust has nine regional and field offices, including a Midwest Office in Chicago which is specifically responsive to Missouri preservation concerns. With the strong support of our 250,000 members nationwide, including 4,000 members in Missouri, the National Trust works to protect significant historic sites, to strengthen and revitalize communities, and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. The President of the National Trust has also been designated by Congress as a member of the Advisory Council on Historic Preservation, the independent federal agency responsible for assisting other agencies to implement Section 106 of the National Historic Preservation Act (*Id.* § 470i(a)(8)).

The National Trust is extremely concerned about cultural resources of the post-war and modern era, and is working to enhance the public's appreciation for and understanding of these resources. We commend the City for its interest in the revitalization of Park Central Square and Springfield's historic core. However, consideration of more sensitive and compatible rehabilitation alternatives for Park Central Square would allow for revitalization while preserving this historic cultural landscape for future generations and maximizing its current public benefit.

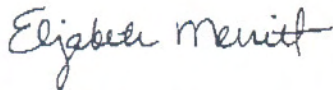
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Thank you for considering the views of the National Trust on this important issue. We trust that you will take the mandates of the National Historic Preservation Act seriously, and we appreciate the opportunity to outline our understanding of the relevant legal constraints that apply to this project. We would be happy to discuss this matter with you in more detail.

Sincerely,



Elizabeth S. Merritt

Deputy General Counsel

cc: Don Klima, Advisory Council on Historic Preservation
Charlene Vaughn, Advisory Council on Historic Preservation
Kathy Harris, Advisory Council on Historic Preservation
Mary Ann Naber, Federal Preservation Office, Federal Highway Administration
Peggy Casey, Federal Highway Administration
Mark Miles, Director, Missouri State Historic Preservation Office
Dan Chiles, Springfield City Council member
Charles Birnbaum, Founder + President, The Cultural Landscape Foundation
Barbara Fitzgerald, Executive Director, Missouri Preservation
Royce Yeater, Midwest Director, National Trust for Historic Preservation
Jennifer Sandy, Midwest Office, National Trust for Historic Preservation